THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.10.2007

+ **TEST CAS 60/2006**

SHRI RABINDER SINGH & OTHERS ... Petitioners

- versus -

THE STATE ... Respondent

Advocates who appeared in this case:
For the Petitioners : Mr Tarun Johri
For the Respondent/State : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This is an application under Section 278 of the Indian Succession Act, 1925 (hereinafter referred to as 'the said Act') for grant of letters of administration in respect of the will (Ex. PW-1/6) of Late Smt Surjit Kaur widow of Late Shri Balwant Singh, who died on 31.03.2000 at New Delhi.

2. The will (Ex. PW-1/6) is not contested. It is a registered will and was registered with the Sub-Registrar-III, New Delhi on 25.07.1997. Under the said will, Mr N.H. Jafri was appointed as the executor. By virtue of Ex. PW-1/2, Mr N.H. Jafri, who has in the meantime migrated to USA, indicated that since he has migrated to USA for good, it would not be possible for him to execute the will. He also stated that the original will was already with one of the legal heirs, Mr Rabinder Singh, who may act as an executer in his place if all the legal heirs agreed to do so and / or opt for the same. A letter dated 22.08.2006 was sent by the said Mr Rabinder Singh to Mr N.H. Jafri requesting him on behalf of all the legal heirs of Late Smt Surjit Kaur to take suitable and appropriate steps for getting the will probated through court and also to take on the responsibilities of executor of the will. This letter is marked as Ex.PW-1/3. This letter was sent by registered A.D. and postal receipts in respect thereof are Ex. PW-1/4. No response to this letter has been received. Ex.PW-1/5 is the citation which was published in the newspaper—The Statesman, Delhi Edition on 14.12.2006. Ex.PW-1/7 is the valuation report in respect of the property which is the subject matter of the will.

3. The will is uncontested. It is also a registered will. Consequently, the same stands proved. As the named executor (Mr N.H. Jafri) has expressed his inability to carry out his responsibilities as an executor, this would amount to his renouncing his executorship. Consequently, the provisions of Section 231 of the said Act would become applicable. Section 231 reads as under:-

> "**231. Procedure where executor renounces or fails to accept within time limited.**—If an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy."

Since the will has already been proved, the letters of administration (with a copy of the will annexed thereto) can be granted to the person or persons who would be entitled to administration in case the said Smt Surjit Kaur had died intestate. For this purpose, the provisions of Section 218 would be relevant. The same reads as under:-

> "**218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.**—(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of

> such deceased, would be entitled to the whole or any part of such deceased's estate.
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> (2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.
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> (3) When no such person applies, it may be granted to a creditor of the deceased."

As stated in the petition, there are no legal heirs of Late Smt Surjit Kaur other than the petitioners themselves, who are the three sons and a daughter of Late Smt Surjit Kaur. All of them have applied for the grant of letters of administration to them collectively. Since they would have been entitled to the grant of letters of administration had Late Smt Surjit Kaur died intestate, the petitioners, would, in the present case also be entitled to the grant of letters of administration in terms of Section 218 read with Section 231 of the said Act. Since all of them have applied for such administration, this petition is allowed by directing that the petitioners collectively be given the letters of administration in respect of the estate left by Late Smt Surjit Kaur. The formal letters of administration be drawn up after the petitioners deposit the requisite stamp. A copy of the will shall be annexed to the letters of administration.

This petition as well as all the pending applications stand disposed of.

BADAR DURREZ AHMED
(JUDGE)

October 09, 2007
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